Supreme Court No. 24-0346

IN THE
IOWA SUPREME COURT

KELLY BRODIE, DR. JOHN HEFFRON, KATHERINE KING, DR. MICHAEL LANGENFELD & KATHERINE RALL,
Plaintiffs/Appellants,

v.

JERRY R. FOXHOVEN, RICHARD SHULTS, JERRY REA, MOHAMMAD REHMAN, GLENWOOD RESOURCE CENTER & IOWA DEPARTMENT OF HUMAN SERVICES,
Defendants/Appellees.

On Appeal from the Iowa District Court for Mills County
Case No. LACV027160
Hon. Craig M. Dreismeier, District Court Judge

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred in holding that the protection of persons with disabilities from abuse, experimentation, and torture while in the State's care is not a "clearly defined and well-recognized public policy" of the State of Iowa.

INTRODUCTION

There is a single issue presented for review: Whether protecting persons with disabilities in the State's care from abuse, experimentation, and torture is a "clearly defined and well-recognized public policy" of the State of Iowa.

It is shocking that the State has the audacity to tell this Court that it is not. It is another example of the systemic failures that led to the State's grave misconduct and to the scathing investigation report from the United States Department of Justice. Persons with disabilities in the care of the State were subjected to grave—and in some cases fatal—abuse, experimentation, and torture. These persons with disabilities had no ability to consent or to resist this abuse. Yet even now the State defends these unconscionable abuses as consistent with the public policy of this State.

Like the State's underlying misconduct, the arguments the State presents here are, quite frankly, inexcusable. For the sake of every person with disabilities in the care of the State, the Court must forcefully reject the State's arguments in their entirety.

ARGUMENT

I. The issue of whether there is a "clearly defined and well-recognized public policy" protecting persons with disabilities from abuse, experimentation, and torture is properly preserved for appeal.

1. *The plaintiffs properly present additional legal support on an issue preserved for appeal.*

The State apparently recognizes how offensive and meritless it is to argue that the protection of persons with disabilities in the State's care is not a "clearly defined and well-recognized public policy" of the State of Iowa. This is likely why the State tries so desperately to argue that the plaintiffs somehow waived the issue.

The State claims that the plaintiffs "did not raise their argument made on appeal that any federal law, international law, or non-Iowa State law created a 'clearly defined and well-recognized public policy.'" State Brief at 21. As a result, the State seems to believe that "[t]hose arguments are not preserved on appeal." State Brief at 21.

The State confuses issue preservation with the legal argument on a preserved issue. "Parties to an appeal frequently make novel arguments on preserved issues. Indeed, such arguments are at the heart of appellate advocacy." *State v. Tucker*, 982 N.W.2d 645, 656 n.2 (Iowa 2022); *see also Bartlett Grain Co. v. Sheeder*, 829 N.W.2d 18, 24

n.4 (Iowa 2013) ("On appeal, both parties have elaborated their positions with ... additional case law citations. We can resolve the parties' dispute ... with the benefit of the additional legal briefing."); *Kleppe v. Fort Dodge Police Dep't*, 947 N.W.2d 418 (table), 2020 WL 1548519, at *6 (Iowa Ct. App. 2020) (agreeing that "presenting a new legal theory, rather than a new issue, on appeal does not violate rules of error preservation").

Other courts addressing this issue agree that citation to specific legal authority "does not constitute a 'claim' requiring presentation to the District Court." *Thompson v. Real Est. Mortg. Network*, 748 F.3d 142, 149 n.6 (3d Cir. 2014). Indeed, "[o]nce a ... claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534 (1992). For this reason, "a party on appeal can always cite a new authority ... in favor of ... what the party advocated for below." *ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, ___ F.4th ___, 2024 WL 3611583, at *5 (11th Cir. 2024).

Consistent with this principle, "[l]itigants can waive or forfeit positions or issues through their litigation conduct in the district court

but not authorities or arguments." *ECB USA, Inc.*, 2024 WL 3611583, at *5 (emphasis added); *see also United States v. Napout*, 963 F.3d 163, 183 n.18 (2d Cir. 2020) ("To be sure, ... appeals courts may entertain additional support that a party provides for a proposition presented below."); *Lawson v. Sun Microsystems, Inc.*, 791 F.3d 754, 761 (7th Cir. 2015) ("[The appellant's] argument ... is more elaborate on appeal than it was in the district court, but no rule prohibits appellate amplification of a properly preserved issue.").

The issue presented for review—whether the protection of persons with disabilities from abuse, experimentation, and torture while in the State's care is a "clearly defined and well-recognized public policy" of the State of Iowa—was raised, preserved, and decided below. Appellants' Brief at 24-25.

Because this issue is properly preserved, it is properly before this Court—as are any supplemental legal theories or authorities in favor the position the plaintiffs advocated in the district court. *See ECB USA, Inc.*, 2024 WL 3611583, at *6 ("A party can no more waive or forfeit [legal authority] for appellate purposes than it can waive or forfeit the existence of a precedent or the words of a statute.").

2. *The plaintiffs were not required to identify legal authority in their pleadings or discovery.*

The State also appears to argue that the Iowa statutes the plaintiffs rely on are somehow "not part of the summary judgment record." State Brief at 26. "[T]hose statutes," the State claims, "appeared only in briefing and not in the factual record" and so were somehow not properly presented to the district court. State Brief at 20.

"Those statutes"—Iowa Code §§ 225C.1(2) and 230A.101(1)—were cited by the plaintiffs in resistance to summary judgment in the district court. D0153, M.S.J. Resistance at 9 (11/23/2022). The plaintiffs rely on those same statutes on appeal. It is unclear how else the State expected the plaintiffs to make Iowa law "part of the summary judgment record."

Nor was there any requirement for the plaintiffs to do so. The issue of whether "a clearly defined and well-recognized public policy that protects the employee's activity .... constitute[s] [a] question[] of law to be determined by the court." *Dorshkind v. Oak Park Place of Dubuque II, L.L.C.*, 835 N.W.2d 293, 300 (Iowa 2013); *see also Ackerman v. State*, 913 N.W.2d 610, 615 (Iowa 2018) ("[T]he identification of the public policy to support the tort and on whether the discharge undermined the policy .... are questions of law for courts to

decide."); *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 282 (Iowa 2000) ("[T]he existence of a public policy ... presents questions of law for the court to resolve.").

As other courts have explained, "pure questions of law do not 'immerse courts in case-specific factual issues—compelling them to marshal and weigh evidence, make credibility judgments, and otherwise address multifarious, fleeting, special, narrow facts that utterly resist generalization.'" *Valdez v. Macdonald*, 66 F.4th 796, 814-15 (10th Cir. 2023) (quoting *U.S. Bank Nat'l Ass'n ex rel. CW Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 388 (2018)) (cleaned up). "Rather, a pure issue of law is one that could be settled once and for all and thereafter would govern numerous cases without any fact-bound and situation-specific aspects." *Id.* at 815 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 701 (2006)) (cleaned up).

When arguing a "pure issue of law," a party is not required to offer evidence of the law into the record. Instead, "[c]ourts may take judicial notice of provisions of the Iowa Code." *Judicial notice of law*, 7 Iowa Prac., Evidence § 5.201:6; *see also State v. Proulx*, 252 N.W.2d 426, 431

(Iowa 1977) ("Statutes of this state are ... subject to the exercise of judicial notice.").

And "[m]atters of which judicial notice is taken, including statutes of Iowa, need not be stated in any pleading." Iowa R. Civ. P. 1.415; *see also Terrace Hill Soc'y Found. v. Terrace Hill Comm'n*, 6 N.W.3d 290, 296 (Iowa 2024) ("Under our notice pleading standard, ... the petition need not identify a specific legal theory.").

Nor is a party required to identify its legal theories or the legal authorities it intends to rely on in answering interrogatories. *See* 27 C.J.S. *Discovery* § 92 ("Interrogatories ... are ... in the nature of an examination designed to obtain disclosures of facts admissible in evidence."); *accord Lawson v. Kurtzhals*, 792 N.W.2d 251, 259 (Iowa 2010) (citing favorably to 27 C.J.S. *Discovery* § 102).

The State's argument that the contents of Iowa law are not "part of the summary judgment record" is meritless.

II. The State's untimely attempt to challenge the plaintiffs' evidence is meritless.

1. *The State waived any issue regarding the plaintiffs' evidence by failing to present it to the district court.*

The State argues that the plaintiffs "have not established ... the proper foundation for the[] documents" offered in opposition to

summary judgment. State Brief at 25-26. The State contends "those documents [were not] properly authenticated and admissible" and so did not "become part of the summary judgment record." State Brief at 25.

"The general rule is that an objection to a particular item of evidence must be made at the earliest time the ground for objection becomes apparent." *Sufficiency of objections: Timeliness, motions to strike and curative instructions*, 7 Iowa Prac., Evidence § 5.103:3. "Failure to object at the earliest opportunity will result in waiver of the alleged error." *Id.*; *see also State v. Washington*, 356 N.W.2d 192, 194 (Iowa 1984) ("In order to properly preserve error in the trial court as to the introduction of evidence, objections to evidence must be made at the earliest time after the grounds for objection become apparent."). "Without proper objection, such issue is not before us." *State v. Johnson*, 272 N.W.2d 480, 483 (Iowa 1978).

The State never objected to the authenticity or admissibility of anything offered by the plaintiffs at summary judgment—not with respect to the Department of Justice report, the plaintiffs' discovery responses, or other documentary evidence. *See* D0165, State M.S.J.

Reply Brief (12/08/2022). This evidentiary argument is raised for the first time on appeal. It is not properly before the Court and should be rejected on that basis alone.

2. *Even if not waived, the plaintiffs' evidence was properly before the district court.*

In opposing summary judgment, the plaintiffs relied on the Department of Justice report and their own interrogatory answers. With respect to the interrogatory answers, the State itself made them part of the summary-judgment record. *See* D0142, State M.S.J. Statement of Material Facts ¶¶ 1-10; Attachments to D0142, State Exhs. A-G (11/04/2022).

The State also failed to object to the plaintiffs' reliance on the Department of Justice report. This is likely because "government memoranda, bulletins, reports, letters, and statements of public record are appropriate for judicial notice." *Cnty. of Santa Clara v. Trump*, 267 F. Supp. 3d 1201, 1217 n.11 (N.D. Cal. 2017) (citing *Brown v. Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005)).

Indeed, courts routinely take judicial notice of reports from the Department of Justice and other government agencies. *See, e.g.*, *Twitter, Inc. v. Barr*, 445 F. Supp. 3d 295, 298 n.1 (N.D. Cal. 2020)

(granting a party's "request[] [for] judicial notice of publicly available reports prepared by the Director of the Administrative Office of the U.S. Courts"), *aff'd sub nom. Twitter, Inc. v. Garland*, 61 F.4th 686 (9th Cir. 2023); *Buchicchio v. LeBlanc*, 656 F. Supp. 3d 643, 650 n.1 (M.D. La. 2023) ("[T]he Court takes judicial notice of the January 25, 2023 final Report of the U.S. Department of Justice Civil Rights Division"); *Trump*, 267 F. Supp. 3d at 1217 n.11 (the court "take[s] judicial notice of ... a copy of a Memorandum prepared by ... [the] U.S. Department of Justice").

The State's untimely attempt to challenge the plaintiffs' evidence is waived and entirely meritless.

III. Protecting persons with disabilities in the State's care from abuse, experimentation, and torture is not a "vague principle."

The State argues that the plaintiffs' "assert[ion] [of] societal importance of protecting persons with disabilities to justify their claims" is nothing more than a "vague principle[]" that cannot "support a wrongful discharge tort claim." State Brief at 37.

There is nothing vague about the statutory public policy of protecting persons with disabilities in the care of the State. Iowa

statute expresses "the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to **exercise their own choices about the amounts and types of services received**." Iowa Code § 225C.1(2) (emphasis added).

The Iowa Supreme Court has held that such statutory findings create clearly defined and well-recognized public policy, emphasizing that "[t]he legislature, by including a findings, purpose, and intent provision ... demonstrated a clearly defined and well-recognized public policy." *Dorshkind*, 835 N.W.2d at 304.

And as demonstrated by the amicus curiae brief of VOR, Inc., other provisions of chapter 225C underscore the importance of the public policy protecting persons with disabilities in the State's care. This includes a statutory "bill of rights" providing for "the right to participation in the formulation of the plan" providing for their "treatment, habilitation and program[s]." Amicus Brief at 14 (quoting Iowa Code § 225C.28B).

Similarly, administrative regulations emphasize the importance of "informed consent" in the care of persons with disabilities. Amicus Brief

at 15 (quoting Iowa Admin. Code r. 441-30.5). These are not "vague principles"—they are expressions of fundamental public policy meant to protect persons with disabilities from the kinds of abuse, experimentation, and torture perpetrated here by the State.

The State acknowledges that "clearly defined and well-recognized public policy" includes protections for worker-compensation claims, unemployment benefits, demands for wages, reporting child abuse, refusing to commit perjury, and enforcing daycare staff-child ratios, among others. State Brief at 28. The State claims that these public policies are important enough to warrant a wrongful-discharge claim, while protecting persons with disabilities from being subjected to experimentation resulting in serious injury and death is not.

It is incredible that any public official could make such a statement. This Court should not accept the State's ill-conceived invitation to cast aside all concern for the health, safety, and lives of this vulnerable population.

IV. The State's arguments are offensive and disregard the rights—and lives—of those in the State's care.

The State claims that if this Court were to agree with the plaintiffs, "any ... employee who is terminated [would have] a

common-law claim for wrongful termination based on any disagreement with management." State Brief at 38.

This argument dismisses the seriousness of the State's misconduct. This case is not about just "any disagreement with management." It is about the plaintiffs' disagreement with management over the abuse, experimentation, and torture of persons with disabilities in the care of the State.

This conduct was so egregious it was the subject of an investigation by the United States Department of Justice. The resulting report found that the State's unconscionable abuses included "conducting unregulated experiments on human subjects, failing to provide constitutionally adequate medical and behavioral health care at [GRC] and utilizing unnecessary physical restraints." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 2-3 (12/30/2022).

These "experiments" were conducted on persons with disabilities who lacked any ability to consent. Most of the GRC residents subject to this abuse "were tube-fed and unable to resist increased fluid intake" forced on them during the so-called "hydration study." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 6 (12/30/2022).

This non-consensual "experimentation" resulted in serious physical injury, significant discomfort, and at least one death. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022).

The suggestion that permitting a wrongful-discharge claim in this instance opens the door to litigation for "any disagreement with management" ignores the horrendous abuses at the hands of the State.

V. Iowa's whistleblower statute does not erase the plaintiffs' common-law remedy for wrongful discharge.

1. *The statutory remedy for whistleblowers is not exclusive by its own terms.*

According to the State, "Iowa's whistleblower statute created for Plaintiffs a statutory remedy that precludes the wrongful discharge tort." State Brief at 43. Apparently, "[t]he existence of such a remedy" under Iowa Code § 70A.28 "precludes Plaintiffs' tort claim." State Brief at 43.

Under § 70A.28, a state official "shall not discharge an employee ... as a reprisal ... for a disclosure of any information by that employee ... if the employee, in good faith, reasonably believes the information evidences a violation of law or rule, ... an abuse of authority, or a substantial and specific danger to public health or

safety." Iowa Code § 70A.28(2). This prohibition "may be enforced through a civil action." Iowa Code § 70A.28(5).

The Iowa Supreme Court has commented that "[s]ection 70A.28 does not expressly declare that its remedies are the exclusive vehicle for state employees to recover for a wrongful discharge in retaliation for whistleblowing." *Ackerman*, 913 N.W.2d at 622. It is true that *Ackerman* ultimately declined to resolve "[t]he preclusive effect, if any, of section 70A.28" because the issue "has not been properly litigated and raised on appeal." *Id.* But *Ackerman*'s commentary on § 70A.28 is persuasive and in line with precedent. This Court should follow it here.

Consistent with *Ackerman*'s commentary, the Iowa Supreme Court previously held that "the fact that the statute contains permissive and not mandatory language point[s] in favor of allowing a common law action." *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 872 (Iowa 2009). And where "the statute used 'may,' permissive language, we concluded the remedy set forth in it was not exclusive." *Ferguson v. Exide Techs., Inc.*, 936 N.W.2d 429, 433 (Iowa 2019) (quoting *George*, 762 N.W.2d at 872).

Like in *George*, the statutory language the State relies on to support its argument is permissive, not mandatory: "Subsection 2 **may** be enforced through a civil action." Iowa Code § 70A.28(5) (emphasis added). Consistent with *George*, and the commentary in *Ackerman*, the Court should reject the State's preemption argument.

2. *The whistleblower statute is a limited remedy that does not preempt a claim related to the plaintiffs' efforts to protect those in their care.*

The State argues that the plaintiffs "claim they were terminated for complaining about violations of State and federal law," and "[s]uch complaints fall squarely under Iowa's Whistleblower statute." State Brief at 44.

The State is wrong. The Iowa Supreme Court has held that "[w]here the legislature has provided a comprehensive scheme for dealing with a specified kind of dispute, the statutory remedy provided is generally exclusive." *Ferguson*, 936 N.W.2d at 433 (quoting *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996)). A "comprehensive" and "exclusive" statutory remedy exists only where "a civil enforcement mechanism granted by the legislature in a statute"

involves "an overlapping common law tort for wrongful discharge in violation of public policy." *Id.* at 430, 433.

This is because "the wrongful-discharge claim focused on the need to provide a remedy for conduct that violated legislatively declared public policy." *Ferguson*, 936 N.W.2d at 432. And where a statute provides such a remedy, "the common law claim for wrongful discharge in violation of public policy becomes unnecessary." *Id.* at 435.

But "[a] wrongful-discharge-in-violation-of-public-policy claim isn't some redundant protection." *Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 601 (Iowa 2023). Nor is the availability of such a claim unnecessary here. Instead of regulating the entire field of whistleblowing, § 70A.28 only applies to whistleblowers who report misconduct to "a member or employee of the general assembly, ... the office of ombudsman, ... a person providing human resource management for the state, or ... any other public official or law enforcement agency." Iowa Code § 70A.28(2).

Those whistleblowers who report misconduct directly to a "public official or law enforcement agency," as opposed to other state employees in positions of authority, are—unlike other litigants—entitled to

equitable relief without a "showing of no adequate legal remedy." *Worthington v. Kenkel*, 684 N.W.2d 228, 234 (Iowa 2004). They are also entitled to "civil damages" up to "three times [their] annual wages and benefits" and "attorney fees and costs." Iowa Code § 70A.28(5)(*a*).

Simply because the Legislature has chosen to provide additional remedies to one subset of whistleblowers does not mean it intended to eliminate all remedies available to other types of whistleblowers. The Iowa Supreme Court has emphasized that "[t]he question isn't simply whether **some** remedy exists for **someone** that advances the public policy at issue, but whether a remedy exists to address the wrong associated with firing an employee against clearly defined public policy." *Carver-Kimm*, 992 N.W.2d at 600 (emphasis in original).

This is why "an employee who was discharged for making an **internal** report of illegal conduct had a valid claim for wrongful discharge in violation of public policy even though the employee had a clear statutory remedy: making an **external** report to [a specific agency]." *Id.* (citing *Dorshkind*, 835 N.W.2d at 316) (emphasis in original).

Likewise, a wrongful-discharge claim existed for "an employee who was terminated for complaining about the employer's nonpayment of benefits even though the employee clearly had other remedies, such as making a statutorily-protected complaint to the labor commissioner for resolution or suing the employer for the unpaid benefits." *Carver-Kimm*, 992 N.W.2d at 600 (citing *Tullis v. Merrill*, 584 N.W.2d 236, 239-40 (Iowa 1998)).

In another example, "the public policy derived from our statutes against perjury" could support a wrongful-discharge claim even where other statutes provide other remedies by "mak[ing] it a crime to commit perjury." *Fitzgerald*, 613 N.W.2d at 286.

Because § 70A.28 applies only to a small subset of whistleblowers, it does not "overlap[] [with a] common law tort for wrongful discharge in violation of public policy." *Ferguson*, 936 N.W.2d at 430. If the Court were to agree with the State, it would end any employment protections for those at-will employees who report misconduct to state employees not expressly identified in § 70A.28(2). Nothing in § 70A.28 compels—or even suggests—that result.

By arguing otherwise, the State essentially urges this Court to overrule a decades-old line of precedent—including *Dorshkind*, *Fitzgerald*, *Carver-Kimm*, and *Tullis*—and remove all protections for "internal whistleblowers" that do not fall within the limited scope of § 70A.28. This Court should refuse to do so.

3. *The plaintiffs were not discharged merely for whistleblowing, but for their numerous efforts to protect persons with disabilities from abuse, experimentation, and torture.*

Even if this Court were to hold that § 70A.28 eliminated all whistleblower protections where misconduct is not reported to a "public official or law enforcement agency," that does not resolve this appeal.

The plaintiffs' wrongful-discharge claim involves more than whistleblowing with respect to the unconscionable and inhuman treatment of persons with disabilities in the State's care. The plaintiffs also engaged in numerous other activities furthering the public policy of this State.

As the plaintiffs identified in their interrogatory answers—which were offered by the State and were not disputed—the plaintiffs' wrongful-discharge claim is also based on other protected conduct beyond that found in § 70A.28.

This conduct included, among others, the plaintiffs' "refus[al] to agree to Defendant Rea's scheme to experiment on GRC residents" and the "refus[al] to obey ... demands by Drs. Rehman and Rea" to participate in those experiments conducted on persons with disabilities without the capacity to consent or resist. Attachment at D0142, State M.S.J. Brief, Exhs. B, D (11/04/2022); *see Carver-Kimm*, 992 N.W.2d at 600 ("We recognized [a] claim for wrongful discharge in violation of public policy to protect employees from firing for refusing to commit an unlawful act."); *see also Davis v. Bd. of Education*, 2020 WL 1848205, at *7 (N.D. Ill. 2020) (cause of action existed where the plaintiff alleged retaliatory discharge after refusing to participate in covering up the supervisor's directive to unlawfully withhold documents from a FOIA-request response), *cited with approval by Carver-Kimm*, 992 N.W.2d at 599-600.

The Iowa Supreme Court already made this distinction in *Carver-Kimm*. There, it held that a wrongful-discharge claim existed where an employee was discharged for complying with the requirements of the open-records statute. *Carver-Kimm*, 992 N.W.2d at 602. At the same time, the Iowa Supreme Court dismissed a separate

claim under § 70A.28 based on the employee's reporting of this same illegal conduct to human resources. *Carver-Kimm*, 992 N.W.2d at 602.

This Court should follow its numerous precedents rejecting the State's arguments and reverse the district court.

CONCLUSION

The State's position in this appeal is as reprehensible as it is wrong. The protection of persons with disabilities in the care of the State is a "clearly defined and well-recognized public policy" of the State of Iowa. To hold otherwise would be an affront to the health, safety, and lives of the most vulnerable Iowans. The plaintiffs respectfully request that this Court reverse the district court's holding otherwise.

Dated this 9th day of August, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS & TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(*d*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size-14 font and contains 4,079 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(*g*)(1).

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CERTIFICATE OF SERVICE

I certify that on August 9, 2024, this document was filed in EDMS, which will effect service on the counsel listed below under Iowa Rule of Appellate Procedure 6.702(2) and Iowa Rule of Electronic Procedure 16.315(1)(*b*).

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